

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-01/04-02/06
Date: 1 November 2017

TRIAL CHAMBER VI

Before: Judge Robert Fremr, Presiding Judge
Judge Kuniko Ozaki
Judge Chang-ho Chung

SITUATION IN THE DEMOCRATIC REPUBLIC OF THE CONGO

**IN THE CASE OF
*THE PROSECUTOR v. BOSCO NTAGANDA***

Public

With Confidential *EX PARTE* Annex A – only available to the Prosecution

Public redacted version of “Additional observations to the ‘Prosecution submissions on appropriate classification level of documents related to deceased Witnesses P-0022 and P-0041’”, 1 February 2016, ICC-01/04-02/06-1135-Conf

Source: Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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Introduction

1. The Office of the Prosecutor (“Prosecution”) provides additional observations to the “Prosecution submissions on appropriate classification level of documents related to deceased Witnesses P-0022 and P-0041” (“Prosecution Submission on Appropriate Classification”). These observations are limited to the admitted documents relating to deceased Witness P-0022, as ordered by Trial Chamber VI (“Chamber”).¹
2. The Prosecution requests that the fourteen photographs depicting deceased Witness P-0022 and her serious [REDACTED] injuries² remain confidential. The Prosecution will apply limited redactions to the public version of two documents: (i) a statement provided by P-0022 to the Prosecution in 2005 (“ICC statement”);³ and (ii) a statement provided to a non-governmental organisation (“NGO statement”).⁴
3. The Prosecution submits that pursuant to articles 54(3)(f), 57(3)(c), 64(2) and (6)(e)(e), and 68(1) and (5) of the Statute and rule 81(4) of the Rules of Procedure and Evidence (“the Rules”), the Court has a duty to preserve the safety, physical and psychological well-being, privacy and dignity of victims, witnesses and their family members.
4. The photographs of P-0022 depict serious bodily injuries sustained by the Witness to [REDACTED] which the Prosecution submits should not be disclosed to the

¹ ICC-01/04-02/06-1100-Conf, p. 4, para. 8. The Prosecution understands that two other documents that prove that the witness is deceased are not part of the Chamber’s order.

² DRC-OTP-0104-0039, DRC-OTP-0104-0040, DRC-OTP-0104-0041, DRC-OTP-0104-0042, DRC-OTP-0104-0043, DRC-OTP-0104-0044, DRC-OTP-0104-0045, DRC-OTP-0104-0046, DRC-OTP-0104-0047, DRC-OTP-0104-0048, DRC-OTP-0104-0049, DRC-OTP-0104-0050, DRC-OTP-0104-0051, DRC-OTP-0104-0052. See also ICC-01/04-02/06-659-Conf-AnxA4 to ICC-01/04-02/06-659-Conf-AnxA17.³ DRC-OTP-0104-0026. See also ICC-01/04-02/06-659-Conf-AnxA3.

³ DRC-OTP-0104-0026. See also ICC-01/04-02/06-659-Conf-AnxA3.

⁴ DRC-OTP-0077-0012. See also, ICC-01/04-02/06-659-Conf-AnxA2.

public. The ICC statement and NGO statement can be made public, with discrete redactions to certain information such as the [REDACTED] and information related to her family members.

5. The Prosecution maintains that the principle of the publicity of the proceedings is outweighed by the statutory provisions protecting privacy of victims, witnesses and their family members and protecting them from the risk of unnecessary traumatisation or re-traumatisation caused by disclosure to the public at large of details which should remain confidential.
6. Appended to this submission is Confidential, *ex parte*, Prosecution Only Annex A which is a chart setting out the specific information to be redacted from the public.

Confidentiality

7. This filing is classified as “Confidential” pursuant to regulation 23*bis*(1) and (2) of the Regulations of the Court due to the confidential nature of information regarding deceased Prosecution Witness P-0022 and surviving family members. Annex A is classified as “Confidential, *EX PARTE*, only available to the Prosecution” as it reveals the content of information that is currently redacted from the Defence. The Prosecution will file a public redacted version.

Procedural History

8. On 18 June 2015, the Prosecution requested the admission of the prior recorded testimony and associated documents of three deceased Witnesses P-0022, P-0041,

and P-0103 (“Documents”) pursuant to rule 68(2)(c) of the Rules of Procedure and Evidence (“Request”).⁵

9. On 20 July 2015, the Defence submitted its response,⁶ following the granting of an extension by the Chamber.⁷
10. On 9 September 2015, the Prosecution submitted additional evidence in support of the Request and produced the statement of the *Chef de localité* who confirmed the details of P-0022’s death.⁸
11. On 20 November 2015, the Chamber admitted the P-0022’s and P-0041’s Documents pursuant to rule 68(2)(c) of the Rules and article 69(4) of the Statute and ordered the Prosecution to file submissions on the appropriate classification level for the Documents.⁹
12. On 10 December 2015, the Prosecution requested that the confidential status of the Documents should not be altered in order to avoid exposing surviving relatives, who are unaware of the witnesses’ cooperation with the Court, to unnecessary risks (“Request to maintain the confidential status”).¹⁰
13. On 16 December 2015, the Defence opposed the Prosecution’s Request to maintain the confidential status of the Documents arguing that the Prosecution failed to show the existence of an objectively justifiable risk to the safety of

⁵ ICC-01/04-02/06-659-Conf with Confidential Annexes 1-2 and Confidential Annexes A1-A17, B1-B62, C1-C4 and D.

⁶ ICC-01/04-02/06-706-Conf-Exp-Red2.

⁷ ICC-01/04-02/06-736-Conf-Exp.

⁸ ICC-01/04-02/06-812 with Confidential *EX PARTE* Annex A and Confidential Redacted Annex A.

⁹ ICC-01/04-02/06-1029.

¹⁰ ICC-01/04-02/06-1050-Conf.

surviving family members if the identity of deceased witnesses is revealed publicly.¹¹

14. On 21 January 2016, the Chamber granted the Prosecution's request to maintain the confidential status of P-0041's prior recorded testimony [REDACTED] and invited the Prosecution to further substantiate its submissions in relation to P-0022's Documents, or provide public redacted versions of the Documents.¹²

Submissions

15. The publicity of the proceedings should be balanced against the Court's statutory obligation to protect the physical and psychological well-being, privacy and dignity of victims, witnesses and their family members pursuant to articles 54(3)(f), 57(3)(c), 64(2) and (6)(e)(e), and 68(1) and (5) of the Statute and rule 81(4) of the Rules.
16. First, in the ICC statement and in the NGO statement, P-0022 describes her experience as a victim of events in 2002. In the ICC statement, she provides a vivid and detailed account of the moment she was captured by the UPC soldiers in Kilo, the "prison" in which she was detained, a pit where she and other prisoners were kept,¹³ and [REDACTED].¹⁴ P-0022 describes how a UPC soldier cut her [REDACTED], threw her [REDACTED] where she lost consciousness,¹⁵ and how she survived in spite of the heavy injuries reported.¹⁶ P-0022 also provides details about her private life [REDACTED] which do not relate to the

¹¹ ICC-01/04-02/06-1057-Conf.

¹² ICC-01/04-02/06-1100-Conf.

¹³ DRC-OTP-0104-0026, para. 31.

¹⁴ DRC-OTP-0104-0026, para. 34-35.

¹⁵ DRC-OTP-0104-0026, para. 41-42.

¹⁶ DRC-OTP-0104-0026, para. 43-47.

facts relevant to the case.¹⁷ In the NGO statement, P-0022 indicates the names of some relatives.¹⁸

17. Disclosing to the public information relating to personal details of P-0022's life, her family members and [REDACTED] would unnecessarily infringe the dignity of the deceased witness and the dignity and privacy of her family members, and exposing the surviving family members to a risk of traumatisation or re-traumatisation. Importantly, [REDACTED]. Therefore the Prosecution will redact such information from the public as specifically indicated in Annex A.

18. The Prosecution proposes to redact from these two statements: (i) personal information relating to the Witness and her family that is not relevant for public disclosure; and (ii) information that would infringe the right of the Witness to dignity, and of her surviving family members and victims to psycho well-being and privacy.

19. Second, P-0022 gave consent for the Prosecution to take photographs of her injuries; the pictures depict her significant injuries including [REDACTED].¹⁹

20. The Prosecution maintains that the fourteen photographs of P-0022's injuries should remain confidential²⁰ as set out above because they carry a risk of

¹⁷ DRC-OTP-0104-0026, para. 20.

¹⁸ DRC-OTP-0077-0012.

¹⁹ DRC-OTP-0104-0039, DRC-OTP-0104-0040, DRC-OTP-0104-0041, DRC-OTP-0104-0042, DRC-OTP-0104-0043, DRC-OTP-0104-0044, DRC-OTP-0104-0045, DRC-OTP-0104-0046, DRC-OTP-0104-0047, DRC-OTP-0104-0048, DRC-OTP-0104-0049, DRC-OTP-0104-0050, DRC-OTP-0104-0051, DRC-OTP-0104-0052. See also ICC-01/04-02/06-659-Conf-AnxA4 to ICC-01/04-02/06-659-Conf-AnxA17.²⁰ DRC-OTP-0104-0039, DRC-OTP-0104-0040, DRC-OTP-0104-0041, DRC-OTP-0104-0042, DRC-OTP-0104-0043, DRC-OTP-0104-0044, DRC-OTP-0104-0045, DRC-OTP-0104-0046, DRC-OTP-0104-0047, DRC-OTP-0104-0048, DRC-OTP-0104-0049, DRC-OTP-0104-0050, DRC-OTP-0104-0051, DRC-OTP-0104-0052. See also ICC-01/04-02/06-659-Conf-AnxA4 to ICC-01/04-02/06-659-Conf-AnxA17.

²⁰ DRC-OTP-0104-0039, DRC-OTP-0104-0040, DRC-OTP-0104-0041, DRC-OTP-0104-0042, DRC-OTP-0104-0043, DRC-OTP-0104-0044, DRC-OTP-0104-0045, DRC-OTP-0104-0046, DRC-OTP-0104-0047, DRC-OTP-0104-0048, DRC-OTP-0104-0049, DRC-OTP-0104-0050, DRC-OTP-0104-0051, DRC-OTP-0104-0052. See also ICC-01/04-02/06-659-Conf-AnxA4 to ICC-01/04-02/06-659-Conf-AnxA17.

traumatisation or re-traumatisation of surviving family members and it will not impact the principle of publicity of the proceedings if photographs of the Witness are not disseminated publicly.

Conclusion

21. For all the foregoing reasons the Prosecution requests that the existing classification as confidential of the photographs of P-0022's face and injuries [REDACTED] be maintained.



Fatou Bensouda
Prosecutor

Dated this 1st day of November 2017

At The Hague, The Netherlands